

# **EXHIBIT A**



March 18, 2015

Via email: [jbarnes@hermitageclub.com](mailto:jbarnes@hermitageclub.com)

Mr. Jim Barnes  
Founder/President  
The Hermitage Club

Dear Jim:

This letter agreement (the "Letter Agreement") is in reply to our recent discussions regarding the use and purchase of Intellectual property and design and engineering services associated with a new residential hotel project for The Hermitage Club.

License to Use IP & Additional Marketing Materials to be Developed

Bull Stockwell Allen (the "Architect") understands The Hermitage Club (The "Owner") would like to purchase a license to use a portion of the Architect's intellectual property, on an interim basis, in order to market a prospective condominium/hotel to be built at Haystack Mountain. This intellectual property consists of the architectural design and associated representative unit plans for a building, specifically a 145,000 to 165,000 square foot mixed use residential building containing approximately 95 residential units on floors 2-6 over a mixed-use ground floor and below grade parking, which works are copyrighted and are registered with the U.S. Copyright Office (the "IP"). The Owner understands the building will need to be redesigned to achieve the Owner's programmatic requirements, site specific conditions, local codes and regulations. As such, the Architect does not warrant that the IP is suitable for the Owner's purposes relative to the Haystack site or the preliminary offering.

In order to facilitate the Owner's preliminary marketing efforts, the Architect, and as part of this Letter Agreement, will also prepare a minimum of two preliminary building elevations, one hand colored building vignette and one photo-realistic building rendering illustrating an artists' conception of the building's "look and feel" as envisioned on the Owner's designated building site. These documents will be billed as an Additional Service not to exceed \$5000 and independent of our other proposed fees. The elevations and vignette will be prepared within four (4) working days following the date of the signed Letter Agreement with the rendering to follow in timely fashion. The Owner agrees to label the renderings and elevations in any and all marketing materials as "Preliminary" in nature and "Subject to revisions upon finalized design and construction."

300 Montgomery Street, Suite 1135  
San Francisco, CA 94104  
T: 415.281.4720

[www.bullstockwellallen.com](http://www.bullstockwellallen.com)

San Francisco

London

Vermont

A handwritten signature in dark ink, followed by the date "3/18/15" written vertically.




The Architect has further outlined a scope of services ("Scope of Work") and professional fee requirements for preparing design and construction documents for a building that is based on the IP, including redesigned or modified structural, mechanical, electrical and plumbing systems (the "DCDs"). The DCDs will further verify and implement current code requirements and include documentation for redesigned floor plans, including the ground floor and parking levels, in accordance with the Owner's program and will include redesigned or modified structural, mechanical, electrical and plumbing systems. The DCD's further include the Architect and its sub-consultants services for Construction Administration as outlined in the December 5, 2014 proposal. The basic Scope of Work does not include the preparation or submittal of Vermont Act 250 application(s) that we understand will be overseen directly by the Owner or its representatives. The Scope of Services include one presentation by the Architect to regulatory agencies, with subsequent meetings or presentations to be handled as an additional service. Moreover, the Owner acknowledges that permits and environmental entitlements could adversely the Owner's desire to commence construction in 2015. Should the schedule slip, the Architect agrees to maintain its professional fees for project delays up to nine (9) months assuming the overall timetable associated with the preparation of the DCDs, as outlined in our December 5, 2014 proposal, extends accordingly. While the use of the existing IP should allow for timely development of Schematic through Construction Documents, the Architects Scope of Work and proposed fees do not include multiple or "fast-tracked" construction sets.

Upon execution of this Letter Agreement, the Owner agrees to immediately pay the Architect a fee of \$50,000 in exchange for a limited license to use (i) the IP and (ii) the elevations, vignette and renderings prepared for the Owner pursuant to this Letter Agreement. This license is for a limited term not to exceed ten (10) months. In addition, the Owner agrees to: (i) use the IP for marketing purposes only; (ii) incorporate into its marketing materials only site specific renderings or building elevations prepared and supplied by the Architect; and, (iii) not use the IP to develop any buildings or other derivative works except as explicitly outlined below. The Architect will retain ownership of the IP until the obligations of the Owner under this Letter Agreement are met in full.

#### Terms and Conditions of Assignment of IP

The Architect agrees to permanently assign all ownership and rights of the IP and DCDs to the Owner pursuant to a further written assignment agreement and subject to the following terms and conditions:

1. The Owner will retain the Architect and its represented sub-consultants, to prepare the DCDs and perform construction oversight for the minimum fees as outlined in the Architect's December 5, 2014 proposal, less \$50,000, and excluding Additional Services and Expenses.

 3/19/15



generated from an interest bearing account, less labor and material costs incurred through the date in which the Architect's services are terminated.

#### Standard AIA Contract

Upon execution of this agreement, the Architect agrees to work with the Owner in good faith to replace this Letter Agreement with a mutually acceptable contract based on the standard AIA contract between Owner and Architect. Any such contract will generally adhere to the general terms of this Letter Agreement, including the attached Terms and Conditions and the Scope of Work outlined in the Architect's December 5, 2014 proposal. Where conflicts occur between said document and this Letter Agreement and Terms and Conditions, this Letter Agreement shall govern.

Payment for labor and material shall be calculated at the rates shown on Architect's rate schedule attached in the December 5, 2014 proposal, except that Architect's travel time will be billed as a reimbursable expense at one-third (1/3) of its standard hourly rates as shown on the referenced rate schedule. In addition, Architect will cap billable hours outside of the office to a maximum of 8 hours per day, regardless of the number of hours actually expended. Travel time will be considered a fully reimbursable expense when the Owner requests the Architect to travel for meetings other than those typically undertaken in conjunction with the Basic Services (e.g. materials research, marketing, presentations, scope changes, governmental review, etc.)

Thank you in advance for the opportunity to be of service to the Hermitage Club. Should you have any questions regarding the above or require any additional information, please let us know.

Sincerely yours,

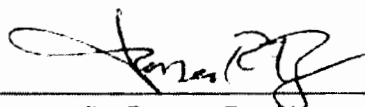
John Ashworth, AIA, LEED AP  
Principal, Vice President  
BULL STOCKWELL ALLEN  
BSA Architects – A California Corporation

bull stockwell allen  
ARCHITECTURE • PLANNING • INTERIORS

I have read the Architect's proposal dated December 5, 2014 and am in agreement with the scope of services of Architect and Architect's consultants described in the Scope of Work and with the professional fees outlined therein. By signing below, I further agree to the terms and conditions outlined herein by which the Architect agrees to assign its IP to the Owner, both on an interim and permanent basis. The Owner's execution of this Letter Agreement and the Architect's receipt and deposit of the IP fee and Retainer shall serve as the Architect's acceptance and official notice to proceed as outlined.

Company: The Hermitage Club

By: \_\_\_\_\_

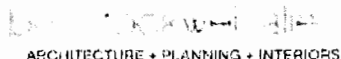


3/19/15

Authorized Signature: Jim Barnes, President

Date:





#### **8. Owner Responsibilities and Notice Required**

The Owner agrees to provide complete physical information about the site and/or buildings and legal, accounting, and insurance counseling services as may be required. BSA shall rely on the accuracy and completeness of the supplied information.

#### **9. Dispute Resolution**

The Owner and Architect will attempt to resolve any dispute relating to our services by direct negotiations between the parties involved prior to mediation. Any claim which is not resolved through negotiations where the disputed amount is less than or equal to \$100,000 US and/or relates to BSA's compensation will be resolved by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. Any unresolved claim, following mediation, will be decided by final and binding arbitration in accordance with the Construction Industry Rules of the American Arbitration Association. Further, any claim which is not resolved by mediation where the disputed amount is greater than \$100,000 and which does not relate to BSA's compensation will be resolved by litigation in a court of competent jurisdiction.

#### **10. Choice of Law**

The laws of the State of Vermont in the United States of America without regard to conflict of law issues shall govern our Letter Agreement and any legal action arising from it shall be brought in a court in this state.

#### **11. Limitation of Liability**

To the fullest extent permitted by law, our liability to you for all damages arising out of our services due to any cause, including our negligence or breach, shall not exceed \$50,000 or the amount of compensation paid to BSA, whichever is greater.

#### **12. Ownership of Documents**

Bull Stockwell Allen agrees to transfer ownership rights of the DCDs to the Owner for future use subject to the terms of this Letter Agreement. Future work, including other architects and engineers overseeing and developing the work through additional design documentation and construction, will require the Owner, its representatives and other design team members to indemnify and hold BSA harmless for the reuse and implementation of BSA's programming, design and documentation related to these or any other projects.

Bull Stockwell Allen will retain ownership rights to the DCDs as outlined in this Letter Agreement. Until the terms and conditions for assignment set forth in this Letter Agreement are met, the DCDs, renderings and other documents, including those in electronic form prepared by Architect and/or Architect's consultants are Instruments of Service and remain the property of the Architect. Architect shall be deemed the author of the Instruments of Service and retain all common law, statutory, and other reserved rights, including copyrights.

#### **13. Termination and Suspension**

This Letter Agreement may be terminated by the Owner or Architect upon written notice should one or the other party fails substantially to perform in accordance with these Terms and Conditions. In the event of termination or project suspension, the Owner agrees to reimburse BSA for services and reimbursable expenses due including the lump sum payment for the Architect's IP. If the Owner suspend the project for more than 90 days, BSA reserves the right to adjust its fees to reflect current personnel and remobilization costs.

Should BSA's services be terminated without breach of our obligations, The Owner agrees to release BSA from all liability from the services we performed and to compensate us for all services performed and expenses directly attributable to termination.

A handwritten signature, possibly "Bull Stockwell Allen", followed by the date "3/19/16".



**14. Asbestos and Hazardous Waste**

BSA does not perform services related to the identification, containment or removal of asbestos or hazardous waste, including pollutants. To the extent permitted by law, the Owner shall indemnify, defend and hold BSA harmless from all claims, damages, losses and expenses including reasonable attorney's fees to the extent caused by the existing hazardous waste conditions on the project site at the time of our performed services.

**15. Insurance**

Bull Stockwell Allen is protected by Workers' Compensation, Professional Liability, and Commercial General Liability Insurance as outlined on the attached Certificate of Liability Insurance.

**16. Successors and Assigns**

The Owner and Architect agree, respectively, to bind our successors and ourselves to the terms of our Agreement. The Owner shall not assign this Agreement or any of its rights, duties or services to a third party. Any such assignment or attempt to assign shall, at BSA's election, render this Agreement null and void, and BSA's earned compensation shall be immediately due and payable.

BSA's services are undertaken and performed solely for the benefit and on behalf of the Owner and not for any third party, including without limitation, any contractor, subcontractor, user, occupant or owner of all or any part of the project.

**17. Standard of Care**

In performing its services, BSA will use the degree of care and skill typically exercised under similar circumstances by competent members of the design professions practicing as of the date of performance of the services. No implied or express warranties are applicable under the Agreement. Nothing herein establishes a fiduciary relationship between the parties nor should any term be construed to extend or exceed this standard of care.

**18. Indemnification**

BSA shall not have control of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Project, for the acts or omissions of the architect of record, contractor, sub-contractor or any other persons performing any of the work, or the failure of any of them to carry out the work in accordance with the Contract Documents.

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300 Montgomery Street, Suite 1135  
San Francisco, CA 94104  
T: 415.281.4720

A handwritten signature in dark ink, appearing to be "J. Allen", followed by the date "3/4/16".

San Francisco London Vermont



Revised, December 5, 2014

Mr. Jim Barnes  
Founder, President  
The Hermitage Club  
At Haystack Mountain  
10 Gatehouse Trail  
Deerfield Valley, VT 05356

**Re: Hermitage Club Mixed-Use Residential Project**

Dear Jim:

Bull Stockwell Allen is pleased to present this revised proposal to you regarding the adaptation of design and engineering documents for an approximately 150,000 square foot mixed-use resort residential building over parking. We understand the owner may use the design for several new buildings to be located at Haystack Mountain, Vermont. Part of this proposal assumes the owner will have the right to reuse the building design in exchange for indemnifying and holding the architect and other design and engineering team harmless for future projects where we do not serve as professionals of record. As discussed, we have reassembled the original project team in order to provide efficient project continuity and to provide you with fully updated construction documents for your initial site at Haystack.

Bull Stockwell Allen's 45-year specialization in mountain resort architecture will bring the Haystack Club a level of design sophistication and consultant coordination that builds upon our experience within the industry. Combined with our local contacts in the region, we propose a fully turnkey documentation effort for your first building. This work will be undertaken in conjunction with detailed site survey and geo-tech information provided to the design and engineering team.

Upon execution of the contract, the work will commence with the release of the unit drawings so that you can build model units with furnishings and finishes to be updated by your interior designer. Following this initial step, the design and engineering team will redesign the building, as necessary, to conform to a specific site and to meet your specific site and programmatic needs for the first project. This will additionally include updates of the structural and mechanical systems in accordance with site demands and current code. We have outlined the proposed scope of work in the Scope of Work outlined below.

300 Montgomery Street, Suite 1135  
San Francisco, CA 94104  
T: 415.281.4720

[bsaarchitects.com](http://bsaarchitects.com)

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This proposal further corresponds with your proposed timeline and payment schedule. Please contact us should you have any questions regarding this proposal or if we can provide you any additional information.

Sincerely yours,

John Ashworth, AIA, NCARB, LEED™ AP  
Principal  
Bull Stockwell Allen

CC Robert Rubin

*Attachments*

## PROPOSED SCOPE OF WORK: MIXED-USE RESORT RESIDENTIAL FOR THE HERMITAGE CLUB

### PROJECT OVERVIEW

The proposed project will be closely based on a previously designed but unbuilt mountain resort residential project for which Bull Stockwell Allen retained its ownership rights. While the building will be modified and updated in accordance with local site and current code requirements, this proposal is largely based on existing architectural and engineering documentation for that project. We understand the owner wishes to build several future projects based on the initial project. As part of this agreement, the architect will grant ownership of the design on the condition the owner agrees to indemnify and hold harmless the design and engineering team for the projects where it does not serve as professionals of record. The reused design will consist of up to a six story building containing:

- Underground parking at the ratio of approximately 1 per unit, assuming a valet parking configuration;
- Ground floor lobby, administrative, and support space, and a potential "General Store," as well as other miscellaneous space to be determined; and,
- A minimum of 95 residential units on floors 2 through 6.

The project will contain approximately 145,000 gross square feet, with the owner assuming non-escalated construction cost at approximately \$350 per square feet, with the final project budget to be determined based on contractor input, desired quality and local market conditions. Anticipated construction will commence in late fall 2015 or spring/early summer, 2016.

Prior to providing documents, BSA and its consultants will require a comprehensive liability waiver for any use that is not accompanied by our professional seal(s) and documentation issued "For Construction" and inclusive of Construction Administration services. BSA and its consultants will retain ownership of the documentation, including any revisions made, until completion of the Construction Administration and the team is paid in full for services rendered.

The design and engineering teams understand that this is not a Fast Track Project in that architectural and structural construction documents are expected to be 100% complete prior to commencement of construction.

### PROJECT TEAM

In addition to architecture and specifications, Bull Stockwell Allen proposes to reunite other members of the design and engineering team as part of this effort. Our proposed team is as follows:

- Structural Engineering- KL&A; Denver, Colorado
- Mechanical, Electrical, Plumbing and Fire Protection – Beaudin Ganze Consulting Engineers; Colorado

Bull Stockwell Allen's team additionally includes specification code (knowledgeable with local Vermont codes), waterproofing and acoustic consultants.

In order to facilitate the redesign and construction effort, BSA proposes to team with a local architect acceptable to the owner whose offices are located in Vermont. We believe this local affiliation will be particularly beneficial during Construction Administration.

We understand the Owner will contract directly for civil engineering, landscape services and interior design. As such, our Basic Services include collaboration with these disciplines. While this work includes the review and overall coordination, it does not include additional interior detailing on behalf of the Owner's interior designer.

Please note that our proposal does not include other specialty consultants whose input is typically outside of our Basic Scope. These consultants include, for example, specialized signage and graphics, security, audio/visual, aquatics, environmental specialists, commissioning agents etc. Should these consultants be required, Bull Stockwell Allen will work with you to identify qualified team members. The coordination of these specialty consultants, during the established project documentation period, is included in our basic scope.

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## PROPOSED SCOPE OF WORK

We understand that your immediate priority will be the construction of model units for marketing purposes. Upon execution of this agreement, Bull Stockwell Allen will prepare dimensioned unit plans for your use. BSA will additionally coordinate the unit plans with your interior team to facilitate their review and documentation for new interior and finish selections.

Following this release, we will commence with any required redesign and reengineering of the project, while maintaining the current design and detailing to the degree possible. We anticipate significant redesign of the basement and ground floor in order to add parking and address owner specific program needs. The team will additionally work to reduce non-residential area, where possible. We additionally anticipate the local Fire Marshall may require fire truck access around the entire building, requiring the substantial redesign of the building's current swimming pool/fitness area location and layout.

We suggest kicking off this redesign via a two or three day workshop between the ownership and design team. The purpose of this workshop will be to verify the assumptions in this proposal and sketch possible revisions required by the site and owner needs. We have provided a separate fee for this initial work. The workshop will serve as owner "insurance" to verify the project's suitability prior to additional investment.

Following the workshop, and having jointly identified an overall project direction, the design team will revise the design for ongoing development.

- During this critical redesign effort, BSA will utilize both Sketch-up and AutoCAD software to:
- Revise the current design solution based on ongoing Owner review and input;
- Coordinate approval of the design solution and prepare preliminary submission documents for planning or other jurisdictional review of the project;
- Coordinate and attend an initial meeting with local officials regarding the scope of the project;
- Issue preliminary Design Documents to your cost estimator or pre-construction contractor for construction cost estimating; and
- Other than the on-site meeting noted above, our proposal assumes ongoing client coordination will occur via telecom or "GoToMeeting."

The design and engineering team has provided an alternate fee should the Owner choose to eliminate one of the upper floors for cost, marketing, building height or any other reason.

Bull Stockwell Allen is a 100% BIM-based office. The original building, however, was designed using AutoCAD. The design team can jointly investigate opportunities to convert the original documentation to Revit. If viable, this may result in a small additional conversion fee.



## Design Development

Using existing documentation, BSA will fast-track the traditional Design Development process. At this stage in the process, Bull Stockwell Allen will examine in detail the approved design and complete the updated project, as necessary, in anticipation of final Construction Documents. Our work during Design Development include the following:

- One additional on-site meeting with the Owner and or local officials to review the project and address identified issues;
- Preparation of Design Development Documents reflecting proposed changes in the design and engineering;
- Coordination of the architectural design for all consultants under contract with the Owner or Architect, as well as the Hermitage Club's selected Interiors Team;
- Bi-weekly telecom coordination of the project budget and schedule with you and your cost estimator or preconstruction contractor, including assistance with ongoing construction cost estimating;
- Real-time project "value analysis", based on contractor and budgetary feedback; and
- Submission of updated Design Development Documents for approval, including finalized plans, common area layouts, elevations, typical wall sections, typical details, colors, materials and finishes, etc.

## Construction Documentation

Upon approval of Design Development, Bull Stockwell Allen and its Consultants will continue to modify existing documentation in order to provide the Owner a complete construction set. These services include:

- Personalized outreach to local representatives related to design, code and plan-check requirements, including an additional site visit if required;
- Ongoing consultant coordination, including coordination with the interiors team on final color and material selections;
- Quality Assurance reviews of the of technical documents prepared by all consultants under contract to Bull Stockwell Allen;
- Assisting the Owner in preparing Bid Documentation, as required, or answering Bid or Pre-Construction questions;
- Ongoing project value analysis through 25% Construction Documents, including revisions to the documents to address the project's budgetary goals;
- Required revision of Permit/Construction Document set to address Plan Check comments, including resubmittal for Project Permitting; and
- Ongoing teleconferences with the Owner and/or its construction representatives.

The drawings will include construction details and specifications necessary for pricing, construction and preparation of shop drawings.





### **Construction Administration**

Typically for projects in Vermont, Bull Stockwell Allen and its primary consultant's partner with local professionals who can visit the site on a regular basis and provide efficient representation and reporting back to the primary Project Team. Construction Administration begins upon the issue of a foundation or building permit.

Additional items in our Basic Scope include:

- Regular and ongoing communication on construction issues requiring Owner input;
- Timely development of clarification sketches to address specific field conditions and assist in the timely progress of the construction in accordance with a pre-negotiated construction schedule;
- Timely review of submittals and ongoing contractor coordination with the purpose of minimizing unnecessary requests for information (RFIs); timely RFI responses are also included in our basic fee;
- Weekly OAC meetings, either as part of our scheduled site visits or via teleconference as appropriate; and
- Proactive coordination of the Consultant Team in anticipation of necessary field reports.

Please note, our proposal assumes the appropriate consultant team member(s) will attend field visits, as appropriate, on an average bi-weekly basis. Our work ends upon the due date for final payment to the General Contractor or in the absence of a certificate for final payment, sixty days after the date of Substantial Completion. Our fee assumes and is limited to fourteen (14) months of construction related services.

### **Structural Engineering**

KL&A's structural engineering proposal includes several components tailored to address the proposed Scope of Work as outlined above. KL&A will undertake customary structural design services for the new structure ("Base Services"), including, but not limited to a complete redesign of the foundation system to accommodate a new site and new geotechnical conditions, as well as redesign of the first two floors to accommodate changes in program.

In addition, the Structural Engineer will evaluate and possibly redesign the structure for the residential levels in order to meet current feasibility and local market conditions.

This proposal includes a licensed, local structural engineering sub consultant (to be determined) who will support the structural team during construction administration.

### **Mechanical, Electrical and Plumbing**

The project's original MEP consultant, Beaudin Ganze Consulting Engineers (BGCE), will provide updated mechanical, plumbing, electrical, lighting, and technology systems engineering design and construction contract administration for project. Specifically the MEP Engineer will undertake the following steps.

#### **Site Adaptation and Code Compliance Engineering**

In term of the building's proposed HVAC systems, BGCE will redesign the building's central heating and cooling central and update heating, cooling and ventilation systems and associated controls to comply with enforced applicable codes.

This scope additionally includes redesign of the building's heating, cooling and ventilation systems associated with garage and first level.

For the Mechanical and Plumbing Systems BGCE will:

- Perform heat loss, heat gain and ventilation calculations;
- Provide COM check or similar energy code-compliance documentation for mechanical systems only;
- Size and specify mechanical equipment; and
- Provide mechanical specifications and drawings

For Plumbing BGCE will:

- Revise the current design to accommodate site-specific utility infrastructure and to comply with enforced applicable codes; and,
- Redesign waste, vent, domestic water and natural gas distribution to accommodate redesign of garage and first level.

In terms of Fire Protection the team will revise the project to accommodate site-specific utility infrastructure. Fire alarm and carbon monoxide detecting systems will be redesigned to meet current code, including fire alarm systems for the garage and ground floor. Other redesign of fire protection systems to be done by design/build vendor based on performance specifications.

BGCE will also update the project's Electrical / Lighting Systems. Specifically, the team will:

- Perform NEC and lighting calculations;
- Provide COM-check or similar energy code-compliance documentation for lighting systems only. Size and specify electrical equipment; and
- Provide electrical and lighting specifications and drawings.

Power will be revised to accommodate site-specific utility infrastructure. The building's electrical distribution will also be re-worked in accordance with applicable codes, including device specification and electrical distribution and device layouts for garage and first level.

Beaudin Ganze's scope includes the redesign of the project's lighting systems to and specifications to comply with enforced applicable codes. Audio Visual, Security and Specialty Interior Lighting are proposed as Additional Services.

## **Cost Estimating**

Bull Stockwell Allen is an advocate of regular and timely cost estimates throughout the duration of the design period, including input by professional cost estimators as appropriate. A team effort between the Owner, Architect and Contractor results, hands down, in the most effective project delivery relative to cost and performance.

For this particular project, our proposal assumes the Owner will provide the Architect project cost estimates at each of these milestones. The team will use these estimates to gage likely construction costs against the project budget.



Throughout the design period, we anticipate regular conference calls for consultant and contractor coordination. The objectives of these coordination meetings will be a well-coordinated set of construction documents that additionally includes Owner and Contractor input and ongoing value analysis.

### **Additional Services**

Additional services for the project will include, but not necessarily be limited to the following:

- Meetings in addition to those outlined in the Scope of Work;
- Comparative analysis of similar resort properties;
- Project documentation or revisions different from those previously contemplated or approved by the Owner;
- Finish models, other than simple massing models required by the architect to complete its design;
- 3D or computer animated services including models, fly-throughs, shadow studies, photo-montages, etc.;
- Rendering and or other presentation materials required for the Owner's marketing purposes;
- Audio Visual and Security Consulting;
  
- LEED™ Certification; and
- Additional site visits not specifically outlined herein.

It is assumed that the site, and its existing conditions, will be delivered to the team in a manner suitable for design and construction, including any necessary survey, geo-tech, demolition, abatement and/or required utility relocations/upgrades, etc. The structural engineer will require appropriate site specific geological survey information.

For Additional Services, BSA will negotiate a fixed-fee scope of work or, in the absence of a pre-approved fee, will notify the Owner for approval and charge on time and expenses basis in accordance with Bull Stockwell Allen's standard hourly rates.

## PRELIMINARY PROJECT + PAYMENT SCHEDULE

Our outlined Scope of Work will commence upon the Owner Authorization to Proceed, the agreed upon initial payment as well as the team's receipt of any necessary site information necessary to redesign the building's structural and MEP systems.

Based on our knowledge of the project to date and updates to your recent memo dated October 10, 2014 we propose the following project and payment schedule:

### **Phase 1: Initial Contract**

Sign a contract to purchase 100% of the architectural services needed to permit and build this facility including an initial "retainer" equal to 5% of the total contract price. Upon execution of the contract and the initial payment, BSA will deliver drawings for model construction of a typical two bedroom with connecting lock-off.

### **Phase 2: Workshop – January 2015**

Bull Stockwell Allen (John Ashworth and one other team member) will attend a two or three day workshop with the ownership team. The workshop will verify site requirements, information needs and programmatic needs in comparison to the original design. BSA will sketch possible design modifications for real-time ownership review and approval for additional development. The owner agrees to pay \$5,000 toward the workshop in addition to its initial 5% payment. The balance due, plus reimbursables, will be paid at the completion of the session.

### **Phase 3: Project Redesign and Preliminary Documentation – January / February 2015**

In conjunction with the model unit construction and pre-sale period, Bull Stockwell Allen and its consultant team will deliver preliminary documents and outline specifications of the proposed building modifications). This work will be sufficient in scope commence the permitting process with local jurisdictions including Wilmington DRB, Fire Department, Act 250, etc. Upon review and prior to submission to the local authorities, the Hermitage Club agrees to pay an additional 25% of the total Contract Amount.

### **Phase 4: Design Development – March / April 2015**

BSA and its consultant team will deliver a complete Design Development package in accordance with industry standards, including design development systems for structural, HVAC, plumbing and electrical elements. At the completion of this stage, the Hermitage Club will pay an additional 20% of the total contract price.

### **Phase 5: 90% Construction Documents – April / June 2015**

In exchange for an additional 30% of the contract price, the BSA team will deliver progress prints suitable for permitting and representing 90% Construction Documents. These documents will be issued mid-April in anticipation of a Construction Start Date as early as possible in May, 2015. Upon submission to the local Building Department and prior to bidding, the Hermitage Club agrees to pay an additional 30% of the total contract price.

### **Phase 6: 100% Construction Documents – Two Weeks following Plan Check Review**

BSA and its consultants will deliver final working drawings in exchange for the remaining 20% of the contract price. BSA will assemble our Construction Administration team for the duration of construction period outlined.

Note that these schedule estimates are independent of entitlement reviews, City approval periods and Owner initiated delays between phases.

## PROFESSIONAL FEES

Professional fees vary as a percentage of construction cost due to a variety of factors including building size, complexity, program elements, location, entitlements, repetition of elements, redesign, etc. For this proposal, the design team's professional fees are outlined on a lump sum basis in conjunction with the proposed Scope of Work, plus Construction Administration. Should the proposed building size or programming change substantially from the work outlined herein, the Architect assumes the Owner and Architect will negotiate mutually acceptable fees as a revision to this proposal.

Please refer to the attached Terms and Conditions for a full listing of assumptions.

Compensation for our Base Services shall through Construction Documents be a lump sum fee of Nine Hundred Fifty-eight Thousand Dollars (\$958,000), plus a workshop fee of \$10,000.

Construction Administration: \$395,000

Additional Fee for Revising the Number of Floors in the Building: \$102,000

Additional Fee for Interior Design Assistance, Detailing and Documentation: \$114,000

Additional Construction Administration: \$28,500 per month beyond specified construction schedule for reasons beyond design team control

Additional Fee for Audio Visual/Security/ Security/ Specialty Lighting: TBD, if required

## Reimbursable Expenses

Reimbursable expenses to the Owner do not involve general office overhead, but rather consist only of direct expenses incurred by the Architect in the production, coordination and delivery of the Project's services. Such expenses include:

- Long distance telephone;
- Reproduction;
- Printing and CAD plotting;
- Faxes;
- Presentation Materials;
- Auto mileage at the prevailing IRS rate, as well as tolls and parking;
- Travel (plane fare, rental cars, accommodations, meals, etc.); and
- Mail, messenger and courier services, etc.

Reimbursable expenses, including those of consultants will be billed at 1.10% of cost in order to cover, reimbursable administration. BSA's travel time will be billed as a reimbursable expense at one-third (1/3) of our standard hourly rates. In addition, BSA will cap billable hours outside the office to a maximum of 8 hours per day, regardless of the number of hours actually expended. The purpose of these concessions is to minimize the costs to our clients for site visits and long-distance meetings.

Travel time will be considered a fully reimbursable expense when the Owner requests the Architect to travel for meetings other than those typically undertaken in conjunction with the Scope of Work (e.g. materials research, marketing, presentations, scope changes, governmental review, etc.).



52

## AUTHORIZATION

If this proposal meets with your approval, please sign and return a copy of this letter as your authorization to proceed. This document will then serve as our Agreement. BSA assumes this Letter Agreement may be supplemented by a formal contract between the Client and Architect, whereupon this proposal will be added to the contract as an exhibit.

Thank you in advance for the opportunity to be of service to the Hermitage Club on this exciting resort residential endeavor. Should you have any questions regarding the above or require any additional information, please let us know.

Sincerely,

A handwritten signature in black ink, appearing to read 'JA', with a stylized flourish extending to the right.

John Ashworth, AIA, LEED AP  
Principal, Vice President  
BULL STOCKWELL ALLEN  
BSA Architects – A California Corporation

Name:

Title:

Company:

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**Authorized Signature:**

Date:



## TERMS + CONDITIONS

**December 2014**

### **1. Validity and Effect**

The following Terms and Conditions are hereby incorporated by reference in the letter, proposal, or agreement ("Agreement") to which they are attached.

These Terms and Conditions will apply to all of the services described in our Agreement, subject to a written amendment signed by the Owner and Architect. This Agreement is valid until supplemented by a formal contract or amended Letter Agreement.

### **2. Fixed Fee Billing**

Billings are based on the percent complete of each phase of the Architect's work or on a Time and Materials basis as noted.

### **3. Hourly Billing**

Billings are based on the hours worked, including discounted travel time. Where an estimated total has been given, it is not an upset figure but is provided solely to assist the Owner in project planning.

### **4. Consultants**

Bull Stockwell Allen manages the services of the consultants under contract to us and coordinates their documents. In addition, BSA will coordinate with those consultants under direct contract with the Owner.

### **5. Reimbursable Expenses**

Reimbursable expenses including, but not limited to, photocopies, specialty printing, prints, long distance communications, travel, delivery, photography including professional photography fees to document the completed project, consultants' reimbursable expenses, renderings, models, translation of electronic documents, project website fees, and any additional insurance that you request will be billed at standard rates. You also agree to reimburse us at our cost for any sales tax, which may be assessed for our professional services. A listing of project expenses can be provided upon request at no charge.

### **6. Change in Services**

These are services beyond those agreed to, including but not limited to revisions due to the Owner's adjustments in the project scope, quality, budget, schedule, and value engineering

occurring after design approval. The Architect's time incurred in negotiating a contract using a form other than AIA Documents will be a Change in Services. [legal fees incurred in connection with the use of other contracts will be a reimbursable expense.]

### **7. Invoices**

BSA will issue an invoice every month for services performed during the previous month. Payment is due within 30 days or as otherwise negotiated in writing by the Owner and Architect. Interest will be payable after 30 days at a rate of 1 1/2 percent. We reserve the right to suspend work on past due accounts. The Owner agrees to reimburse BSA for all costs incurred by us, including legal fees, related to collection.

### **8. Owner Responsibilities and Notice Required**

The Owner agrees to provide complete physical information about the site and/or buildings and legal, accounting, and insurance counseling services as may be required. BSA shall rely on the accuracy and completeness of the supplied information.

### **9. Dispute Resolution**

The Owner and Architect will attempt to resolve any dispute relating to our services by direct negotiations between the parties involved prior to mediation. Any claim which is not resolved through negotiations where the disputed amount is less than or equal to \$100,000 US and/or relates to BSA's compensation will be resolved by mediation in accordance with the Construction Industry Mediation Rules of the American Arbitration Association. Any unresolved claim, following mediation, will be decided by final and binding arbitration in San Francisco, CA in accordance with the Construction Industry Rules of the American Arbitration Association. Further, any claim which is not resolved by mediation where the disputed amount is greater than \$100,000 and which does not relate to BSA's compensation will be resolved by litigation in a court of competent jurisdiction.

### **10. Choice of Law**

The laws of the State of Vermont in the United States of America without regard to conflict of law issues shall govern our Agreement and any legal action arising from it shall be brought in a court in this state.



#### **11. Limitation of Liability**

To the fullest extent permitted by law, our liability to you for all damages arising out of our services due to any cause, including our negligence or breach, shall not exceed \$50,000 or the amount of compensation paid to BSA, whichever is greater.

#### **12. Ownership of Documents**

Upon payment of services rendered, Bull Stockwell Allen agrees to transfer ownership rights of the programming to the Owner for use by others, including architects and engineers who will oversee and develop the work through additional design documentation and construction. As such, the Owner, its representatives and other design team members agree to indemnify and hold BSA harmless for the use and implementation of BSA's programming and conceptual design work related to these or any other projects.

Until the Architect has been paid in full for its services, the drawings, specifications, renderings and other documents, including those in electronic form prepared by Architect and/or Architect's consultants are Instruments of Service and remain the property of the Architect. Architect shall be deemed the author of the Instruments of Service and retain all common law, statutory, and other reserved rights, including copyrights.

#### **13. Termination and Suspension**

This Agreement may be terminated by the Owner or Architect upon written notice should one or the other party fails substantially to perform in accordance with these Terms and Conditions. In the event of termination or project suspension, the Owner agrees to reimburse BSA for services and reimbursable expenses due. If the Owner suspend the project for more than 90 days, BSA reserves the right to adjust its fees to reflect current personnel and remobilization costs.

Should BSA's services be terminated without breach of our obligations, The Owner agrees to release BSA from all liability from the services we performed and to compensate us for all services performed and expenses directly attributable to termination.

#### **14. Asbestos and Hazardous Waste**

BSA does not perform services related to the identification, containment or removal of asbestos or hazardous waste, including pollutants. To the extent permitted by law, the Owner shall indemnify, defend and hold BSA harmless from all claims, damages, losses and expenses including reasonable attorney's fees to the extent caused by the existing hazardous waste

conditions on the project site at the time of our performed services.

#### **15. Insurance**

Bull Stockwell Allen is protected by Workers' Compensation, Professional Liability, and Commercial General Liability Insurance. BSA will furnish copies of insurance certificates upon Owner's request.

#### **16. Successors and Assigns**

The Owner and Architect agree, respectively, to bind our successors and ourselves to the terms of our Agreement. The Owner shall not assign this Agreement or any of its rights, duties or services to a third party. Any such assignment or attempt to assign shall, at BSA's election, render this Agreement null and void, and BSA's earned compensation shall be immediately due and payable.

BSA's services are undertaken and performed solely for the benefit and on behalf of the Owner and not for any third party, including without limitation, any contractor, subcontractor, user, occupant or owner of all or any part of the project.

#### **17. Standard of Care**

In performing its services, BSA will use the degree of care and skill typically exercised under similar circumstances by competent members of the design professions practicing as of the date of performance of the services. No implied or express warranties are applicable under the Agreement. Nothing herein establishes a fiduciary relationship between the parties nor should any term be construed to extend or exceed this standard of care.

#### **18. Indemnification**

BSA shall not have control of, and shall not be responsible for, construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Project, for the acts or omissions of the architect of record, contractor, sub-contractor or any other persons performing any of the work, or the failure of any of them to carry out the work in accordance with the Contract Documents.

The Owner, as such and to the degree permitted by law, agrees to defend and indemnify BSA and our Consultants against all damages, claims, losses, suites and expenses, including attorney fees, related to the use of BSA's documents.